

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUAN DAVILA-BAJANA,

Plaintiff,

v.

TIM HOLOHAN, et al.,

Defendants.

Civil Action No. 04-253 Erie

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on September 7, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Amended Report and Recommendation [Doc. No. 45], filed on July 18, 2006, recommended that Defendants' motion to dismiss [Doc. No. 16] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Defendants filed objections on July 21, 2006 [Doc. No. 47]. After de novo review of the motion and documents in the case, together with the Amended Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 8<sup>th</sup> day of August, 2006;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss [Doc. No. 16] is GRANTED as to the FTCA claim and Eighth Amendment claim, and DENIED as to the retaliation claim.

The Amended Report and Recommendation [Doc. No. 45] of Magistrate Judge Baxter, filed on July 18, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge